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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,127	11/25/2003	Herbert Eichenauer	PO-7827/LeA 36,408	6193

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EXAMINER

MULLIS, JEFFREY C

ART UNIT	PAPER NUMBER
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1711

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
2 MONTHS	04/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/721,127
Filing Date: November 25, 2003
Appellant(s): EICHENAUER ET AL.

MAILED
APR 24 2007
GROUP 1700

Aron Preis
For Appellant

EXAMINER'S ANSWER

Art Unit: 1711

This is in response to the appeal brief filed 12-21-06 appealing from the Office action mailed 1-10-06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

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The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

5,276,092	KEMPNER et al.	1-1994
00/06648	VAN DER HELDER et al. (Patent Cooperation Treaty)	2-2000

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kempner et al. (US 5,276,092) in view of Van der Helder, WO 00/06648, (relied on for claims 6, 7 and 21).

Kempner discloses a composition containing two grafted lattices both produced using persulfate/activator (although the activator portion of the system may or may not be present at column 7 lines 11-19) and which are "co-microagglomerated" (column 12, lines 46-60). Thermoplastics such as polycarbonates or polyamides may be added at column 5, lines 55-64). Flame retardants may be added at column 5, lines 30-35.

While there are no Examples in the patent of use of one initiating system "consisting of" persulfate compounds as required by "ii" of claim 1 such usage would

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have been obvious to a practitioner having an ordinary skill in the art at the time of the invention given that the patent discloses that persulfates may be used without activators and in the expectation of adequate results absent any showing of surprising or unexpected results.

There are no specific examples using applicants' specific thermoplastics or flame retardants. However choice of applicants thermoplastics from the primary reference would have been obvious to a practitioner having an ordinary skill in the art the time of the invention in the expectation of adequate results, absent any showing of surprising or unexpected results.

With regard to the use of applicants (specific) flame proofing agents in claims 6, 7 and 21, Kempner discloses the use of flame retardants and the secondary reference discloses applicants flame retardants for rubber modified thermoplastics and therefore use of the flame retardants of the secondary reference in the primary reference, would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention motivated by the desirability of a flame retardant composition, absent any showing of surprising or unexpected results.

(10) Response to Argument

Appellants rely on allegations of unexpected results to rebut the Examiner's prima facie case of obviousness and point to the results at pages 27 et seq of their specification. Firstly, unexpected results must be with the closest prior art which in this case is Kempner et al. who requires the use of coprecipitated graft copolymers while (allegedly comparative) Examples 4-6 of applicants table on page 33 of their

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specification do not use coprecipitated graft copolymers. Patentees at column 2, lines 21-30 specifically discloses two core shell polymers "agglomerated together" to achieve the end result of "improving surface appearance". Applicants allege that their results (improved surface appearance) are due to use of their combination of initiators but examples which compare compositions containing coagglomerated core shell polymers with those that are not coagglomerated is not data which is probative of patentability where the prior art coagglomerates their core shell polymers. Proper comparative data for instance would compare Examples according to the prior art with examples which were identical to such patent Examples except for lack of use of the activator component for the initiating system used to produce one of the core shell polymers of patentees. The fact that data according to the patent have not been presented alone is more than sufficient to conclude that appellants have not met their burden of proof in establishing unexpected results. The fact that the prior art explicitly discloses improved surface appearance due to coagglomeration casts further doubt on appellants' allegations of unexpected results.

With re to Van der Helder, it is noted that the independent claim does not require the use of a flame retardant and as Van der Helder is relied upon as a secondary reference for the use of specific flame retardants, Van der Helder was cited merely to bolster the rejection the rejection of the independent claim.

For the above reasons, it is believed that the rejections should be sustained.

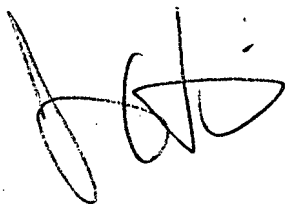
(11) Related Proceeding(s) Appendix

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No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,

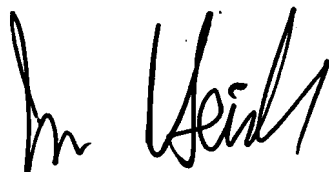
Jeffrey Mullis

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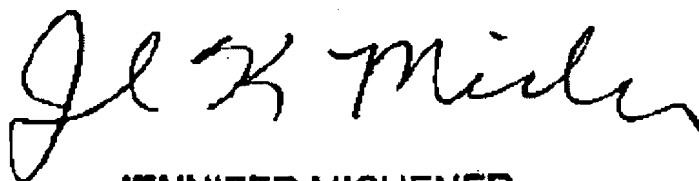
Jeffrey Mullis
Primary Examiner
Art Unit 1711

Art Unit: 1711

Conferees:

A handwritten signature in black ink, appearing to read "Jm Seidleck".

James Seidleck

A handwritten signature in black ink, appearing to read "Jl K Michener".

JENNIFER MICHENER
QUALITY ASSURANCE SPECIALIST

Jennifer Michener

JCM

4-5-07